

BEFORE THE DEPARTMENT OF  
NATURAL RESOURCES AND CONSERVATION  
OF THE STATE OF MONTANA

\* \* \* \* \*

IN THE MATTER OF PETITION TO THE	)	NOTICE OF 2-YEAR
DEPARTMENT OF NATURAL RESOURCES	)	EXTENSION OF THE HORSE
AND CONSERVATION (DNRC) FOR	)	CREEK TEMPORARY
ESTABLISHMENT OF THE HORSE CREEK	)	CONTROLLED GROUND WATER
CONTROLLED GROUND WATER AREA NO.	)	AREA
43C-30006730	)	

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The Horse Creek Temporary Controlled Ground Water Area was designated on February 12, 2004 for a two year period. Mont. Code Ann. 85-2-507 allows that a temporary controlled ground water area can be extended for an additional four years from the initial expiration date, in 2 year increments, for sufficient cause. Notice of an extension must be provided to the parties and ground-water appropriators in the area. Mont. Code Ann. § 85-2-507(5)(a). The Horse Creek Temporary Controlled Ground Water Area was previously extended for a two-year period and is set to expire February 12, 2008.

The temporary controlled ground water area is located southwest of Absarokee, MT and consists of approximately 4600 acres and is described as: the S½S½SW¼, S½SW¼SE¼ Section 2; S½S½S½, W½W½ Section 3; that portion of Section 4 lying east of Grove Creek Road in S½ and E½NE¼; that portion of Section 9 lying east of Grove Creek Road; Section 10; W½, W½E½ Section 11; W½, W½NE¼, NW¼SE¼ Section 14; Section 15; Section 16: N½ Section 21; and N½ Section 22, Township 4 South, Range 18 East, Stillwater County, Montana.

The purpose of the temporary designation is for gathering information on aquifer properties, aquifer recharge, and aquifer

withdrawals to assist in determining if a permanent controlled ground water area is warranted.

On December 7, 2007, the Horse Creek Water Users (Petitioners), by and through their attorney, Patrick G. Begley, requested a *second*, and final, two-year extension of the existing controlled ground water area. The Petitioners have annually reported to the DNRC the progress they have made towards monitoring and data collection in the area. Petitioners request additional time to conduct a complete inventory of all water resources within the originally requested boundary area and determine whether an expanded boundary should be considered. On December 12, 2007, Crow Chief Meadows, by and through their attorney, Kenneth D. Tolliver, submitted a response objecting to the request for the extension. Crow Chief Meadows argues that the Petitioners have had four years to conduct their studies and requested a hearing, among other arguments.

The Department is charged with making the best decision it can regarding whether or not to establish a controlled ground water area. The Petitioners have presented a report focusing only on a portion of the current controlled ground water area. They now express confusion over new boundaries which they proposed at the time of the last two-year extension. Given all of the circumstances and as explained below, the Department finds it is in the best interest of making a good decision on designation of a controlled ground water area to extend the temporary designation for another two years.

Additional data and analysis of conditions within the boundary of the temporary controlled ground water area and surrounding areas, up to and including hydrogeologic boundaries, are necessary to evaluate aquifer properties, aquifer recharge, aquifer withdrawals, the appropriate boundary if a permanent controlled ground water area is designated, and potential control measures that might be designated. Statute states that the facts gathered during the study period must be presented at a hearing prior to the designation of a permanent controlled ground water area. MCA 85-2-507(5)(b). DNRC anticipates that additional monitoring and data gathering can be completed by the spring/summer of 2009 and a hearing on whether to permanently designate a controlled ground water area will be held no later than the autumn of 2009. DNRC will compile the final data and complete a report prior to the hearing. The Department will present the facts gathered during the temporary designation at hearing and all interested persons may present their relevant evidence and information at that time.

DNRC finds good cause exists to support an extension, and hereby **EXTENDS** the Horse Creek temporary controlled ground water area to February 12, 2010. Prior to the expiration of the 2-year extension, a hearing will be held to determine if a permanent controlled ground water area should be designated. Mont. Code Ann. § 85-2-507(5)(b).

Dated this 12th day of December 2007.

/Original signed by John E. Tubbs/  
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